

Assembly Constitutional Amendment

No. 26

Introduced by Assembly Member Smyth

March 6, 2012

Assembly Constitutional Amendment No. 26—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 12 to Article VII thereof, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

ACA 26, as introduced, Smyth. Public employees' retirement.

Existing law provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This measure would require that a public employee, as defined, who is convicted of any violent felony, serious felony, or a sex offense, as defined, for conduct arising out of, or in the performance of, his or her official duties in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, forfeit retirement benefits attributable to service performed on and after the earliest date of the commission of the felony, as specified. The measure would also require any contributions to the public retirement system made by the public employee on or after that date to be returned, without interest, to the public employee upon the occurrence of a distribution event, as defined, unless otherwise ordered

by a court or determined by the pension administrator. The measure would also make related, conforming changes.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2011–12 Regular
3 Session commencing on the sixth day of December 2010,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California that the
6 Constitution of the State be amended as follows:

7 First—That Section 12 is added to Article VII thereof, to read:

8 SEC. 12. (a) This section applies to all public employers and
9 to all public employees who are members of a public retirement
10 system, regardless of the date the public employee is first hired by
11 a public employer, to the fullest extent permissible under the United
12 States Constitution.

13 (b) If a public employee is convicted by a State or federal trial
14 court of a felony, as defined in subdivision (f), for conduct arising
15 out of or in the performance of his or her official duties, or in
16 pursuit of the office or appointment, or in connection with
17 obtaining salary, disability retirement, service retirement, or other
18 benefits, he or she shall, as of the date of conviction, forfeit all
19 rights and benefits attributable to service performed on and after
20 the forfeiture date in any public retirement system in which he or
21 she is a member and shall not accrue further benefits in that public
22 retirement system. The retirement benefits shall remain forfeited
23 notwithstanding any reduction in sentence pardon, grant of
24 clemency, or expungement of the record of conviction following
25 the date of conviction. Retirement benefits attributable to service
26 performed prior to the forfeiture date shall not be forfeited as a
27 result of this section.

28 (c) Any contributions to the public retirement system made by
29 the public employee described in subdivision (b) on or after the
30 forfeiture date shall be returned, without interest, to the public
31 employee upon the occurrence of a distribution event unless
32 otherwise ordered by a court or determined by the pension
33 administrator.

34 (d) The public employer that employs a public employee
35 described in subdivision (b) and that public employee shall each

1 notify the public retirement system in which the public employee
2 is a member of that public employee's conviction within 60 days
3 of conviction in the trial court. The public employer's notification
4 obligations shall not apply if the public employee's conviction
5 occurs after the public employee separates from employment or
6 office with that public employer. The operation of this section is
7 not dependent upon the performance of the notification obligations
8 specified in this subdivision.

9 (e) If the public employee's conviction is reversed and that
10 decision is final, the employee shall be entitled to recover the
11 forfeited retirement benefits upon redeposit with the system of the
12 contributions received, if any, pursuant to subdivision (c).

13 (f) For the purposes of this section, the following definitions
14 shall apply:

15 (1) "Contributions" means the contributions to a public
16 retirement system required or authorized to be paid by a member
17 of the system, as fixed by law, regulation, administrative action,
18 contract, contract amendment, or other agreement.

19 (2) "Distribution event" means any of the following occurring
20 after the date of conviction by the trial court:

21 (A) Separation from employment.

22 (B) Death of the member.

23 (C) Retirement of the member.

24 (3) "Felony" means a violent felony, as defined by Section 667.5
25 of the Penal Code; a serious felony, as defined by Section 1192.7
26 of the Penal Code; or a felony that requires the convicted person
27 to register as a sex offender, as determined by Section 290 of the
28 Penal Code; or any of those felonies as those sections are
29 subsequently amended by the Legislature; or a felony under the
30 laws of the United States that would qualify as one of those
31 felonies.

32 (4) "Forfeiture date" means the earliest date of the commission
33 of a felony described in subdivision (b) for which the public
34 employee is convicted.

35 (5) "Public employee" means an officer, including those elected
36 or appointed, or an employee of a public employer.

37 (6) "Public employer" means:

38 (A) The State and every State entity, including, but not limited
39 to, the Legislature, the courts, the California State University, and
40 the University of California.

- 1 (B) Any political subdivision of the State, including, but not
2 limited to, a city, county, city and county, charter city, charter
3 county, charter city and county, school district, community college
4 district, joint powers authority, joint powers agency, and any public
5 agency, authority, board, commission, district, or other entity.
6 (7) “Public retirement system” means any pension or retirement
7 system of a public employer.